IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

1. S.B. Civil First Appeal No.551/2006

Ritesh Kumar Vs. Smt. Chandrakanta

2. S.B. Civil First Appeal No.552/2006

Ritesh Kumar Vs. Smt. Chandrakanta

Date of Judgment :: **18th May, 2007**

Hon'ble Dr. Vineet Kothari, J.

Mr.N.K. Tiwari)
Mr.P.S. Rajawat)for the appellant.
Mr.R.K. Agarwal for the respondent.

REPORTABLE

1. These two appeals were filed in this Court on 19.12.2005 without payment of any court fees. The suit of the plaintiff-respondent for cancellation of the sale deed in favour of the appellant-defendant was decreed by the trial court on 14.9.2005 holding that the sale deed executed by one Shri Sumer Singh on 16.12.2000 in favour of the appellant-defendant, Ritesh Kumar, was liable to be cancelled as the power of attorney alleged to have been executed by the plaintiff, Smt.

Chandra Kanta, in favour of Shri Sumer Singh, was found to be “farji” or “forged”.

2. The office raised an objection that since no application under Section 149 of C.P.C. has been filed nor any court fees has been paid, the limitation for filing of the appeals would be computed only after filing (depositing) of the court fees.

3. The appellant deposited the court fees of Rs.15,065/- as per the valuation of the suit along with the application under Section 149 of C.P.C. on 8.9.2006. The appellant also filed another application under Section 148 of C.P.C. in this Court on 11.5.2006 seeking extension or enlargement of the time for payment of required court fees. However, at the time of arguments, learned counsel for the appellant, Mr. N.K. Tiwari, did not press the said application under Section 148 of C.P.C. Accordingly, the said application under Section 148 of C.P.C. is rejected as not pressed.

4. Another application under Section 5 of the Limitation

Act seeking condonation of delay in filing of the appeal has also been filed.

5. Heard learned counsels for the parties at some length.

6. Learned counsel for the appellant submits that the delay in payment of court fees occurred on account of financial crisis of the appellant and the delay of 262 days in filing the appeals, therefore, deserves to be condoned under Section 149 of C.P.C.

7. Mr. R.K. Agarwal, learned counsel appearing on behalf of the respondent, however, strongly opposed the said application under Section 149 of C.P.C. as well as application under Section 5 of the Limitation Act and drawing the attention of the Court towards Sections 148 and 149 of C.P.C. and he urged that when the appeals were filed before this Court on 19.12.2005 without court fees, they were incompetent and, therefore, no appeal in the eye of law. He further submitted that since no application under Sections 148 and 149 of C.P.C. was filed along with the appeal seeking extension of time or

condonation of delay in payment of court fees at that point of time along with even the incompetent, no such application at a later stage could be entertained. He further submits that the reason assigned for non-payment of court fees is also absolutely vague and incorrect and, therefore, is no good ground for condonation of delay in filing these appeals and delay in payment of court fees. He also relied upon the judgment of the Hon'ble Supreme Court in **Buta Singh Vs. Union of India [(1995) 5 SCC 284].**

8. Sections 148 and 149 of of C.P.C. are reproduced hereunder for ready reference:-

> "148. **Enlargement of Time** – Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired.
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> 149. **Power to make up deficiency of Court-fees** – Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of

> which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

9. A bare perusal of Section 149 of C.P.C. shows that the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon payment of such court fees, the appeal can be taken as a competent and maintainable. Section 148 of C.P.C. on the other hand allows the Court to enlarge the time period fixed or granted by the Court itself from time to time, but such enlargement shall not exceeded thirty days in total. The period of thirty days has been introduced by way of amendment of Section 148 of C.P.C. by Act No.46 of 1999 w.e.f. 1.7.2002. It may be noted that Section 148 allows extension or enlargement of time fixed or granted by the Court for doing any act prescribed or allowed by this Code, whereas Section 149 of C.P.C. empowers the Court to allow at any stage to make up the deficiency of court fees and it permits the Court, upon fair use of discretion, to allow such person to pay the whole or part of the court fees. Thus, power under Section 149 of C.P.C. is wider than the one give under Section 148 of C.P.C.

and the contention of Mr. R.K. Agarwal, learned counsel for the respondent, that limitation of 30 days introduced in Section 148 of C.P.C. by amendment of the Section 149 of C.P.C. w.e.f. 1.7.2002 also cuts into the power of the Court under Section 149 of C.P.C. cannot be sustained. In the opinion of this Court, the power under Section 149 of C.P.C. is independent and it allows the Court in its discretion at any stage to allow the person by whom such court fees is payable, to pay the whole or part of the court fees as the case may be. Of course, the discretion of the Court is a judicial discretion and has to be fairly used depending upon the facts and circumstances of the case.

10. In Buta Singh Vs. Union of India (supra), the Hon'ble Supreme Court in Para 9 of the said judgment observed as under:-

> “The discretion conferred on the court by Section 149 is a judicial discretion. The court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit court fees and he was under bona fide mistake in payment thereof. Mere poverty or ignorance or inability to pay the court fees at the time of presenting the appeal is not always a good ground for indulgence under Section 149. Bona fide mistake on the part of the

> appellant or applicant in making the deficit court fees may be a ground to exercise discretion in favour of the appellant."

11. Though the said case of Buta Singh (supra) arose in different circumstances, namely, where the Court did not allow the payment of additional deficit court fees, which was sought to be paid for seeking enhancement of compensation in land acquisition matter during the pendency of the appeal, the observations of the Hon'ble Supreme Court quoted above clearly indicate that the judicial discretion conferred on a Court under Section 149 of C.P.C. has to be exercised in an objective and fair manner. The Apex Court has categorically held that mere poverty and ignorance and inability to pay the court fees at the time of presenting the appeal is not always a good ground for indulgence under Section 149 of C.P.C.

12. In the present case also, in the one page application under Section 149 of C.P.C. filed by the appellant on 8.9.2006, the appellant has merely stated that the appellant is a poor person and could not submit the court fees at the time of filing of the appeal. Nothing beyond this has been said in this

application and no details of his financial position and earing sources, no details of his property etc. has been furnished by the appellant along with the said application. There is no explanation further that why it took approximately 9 months (262 days) to deposit the said court fees of Rs.15,065/-. In view of these vague averments made in the application, this Court is not inclined to allow the said application under Section 149 of C.P.C. and condone the delay in payment of the court fees. It would not be fair use of judicial discretion in the present case to condone such huge delay and allow the present appeals to be maintained. More so, when no such application was filed at the time of filing of the present appeals giving reasons for not paying the court fees at the time of presentation of the appeal itself. Therefore, filing of such belated application under Section 149 of C.P.C. cannot be said to be bona fide.

13. In view of this, the application under Section 149 of C.P.C. dated 8.9.2006 is rejected. Consequently, both the first appeals filed by the appellant-defendant without payment of court fees on 19.12.2005 are held to be incompetent and are also liable to be rejected. The application under Section 5 of the

Limitation Act is also rejected for the same reasons. Accordingly these appeals themselves are rejected as incompetent with no order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.